IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.86 of 2003(O&M)

Decided on : September 20, 2010

Satnam Singh alias Satta

... Petitioner

VERSUS

Assistant Commissioner of Customs

... Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.PBS Goraya, Advocate for the petitioner.

Mr.HPS Ghuman, Advocate for the respondent.

A.N.JINDAL, J.-

This petition is directed against the judgment dated 27.9.2002, rendered by the Sessions Judge, Amritsar, vide which the appeal of the accused – petitioner Satnam Singh (herein referred as the accused) against the judgment dated 24.8.1999 passed by Chief Judicial Magistrate, Amritsar, convicting and sentencing him to undergo rigorous imprisonment for three years and to pay fine of Rs.5000/- under Section 135 of the Customs Act, 1962 (for brevity `the Act') was dismissed.

Succinctly put, the facts are that on 22.3.1995, at about 8.30 PM, when the Prevention Staff of Customs Department, Amritsar assisted by Punjab Police were present at the T-point of village Nangal Tola near Rajasansi, the accused was seen coming. On suspicion, he was

apprehended. After disclosure of the identity by the Investigating Officer, they conducted the personal search of the accused in the presence of independent witnesses, namely; Kuldip Singh and Karaj Singh, leading to the recovery of 6 gold biscuits of foreign origin and Rs.220/- in cash. Panchnama (Ex.PA) was prepared and signed by Mahipal Singh, Inspector Customs Preventive Amritsar, Hansa Singh OPD and two independent witnesses Kuldip Singh and Karaj Singh. Recovery memo (Ex.PB) was also prepared by Inspector Mahipal. The accused was brought to the Customs House, Amritsar. M/s Jagan Nath Om Parkash Saraf tested the purity, weighment and gave valuation of the recovered biscuits vide his written certificate authenticating purity of the gold to the extent of 24 carat, weighing 699.840 gms valuing Rs.3,28,925/-. The six gold biscuits were seized under Section 110 of the Customs Act, 1962 under the belief that the same were liable to be confiscated under Section 111(d) of the Act and having been imported /acquired /smuggled into India from foreign territory in violation of provisions of Import (Control) Order No.17/55 dated 7.12.1955 read with Section 4 of the Foreign Trade (Development & Regulation Act, 1962) and Section 11 of the Customs Act, 1962.

On 23.3.1995 and 25.3.1995, the accused made confessional statements, Ex.PC and PH, respectively, before Anoop Kumar, Customs Superintendent under Section 108 of the Act, admitting the recovery of six gold biscuits of foreign origin from his possession. He while confessing the guilt, gave a long story regarding the possession of gold biscuits and further stated that he was going to sell the aforesaid biscuits at the shop of Harbhajan Singh of Gate Hakima Wala, Amritsar.

On completion of the investigation, a criminal complaint was filed against the accused and pre-charge evidence in the shape of statements of Mahipal Singh Inspector Customs (PW1) and Anup Kumar Superintendent Customs (PW2) was recorded.

Finding a prima facie case, the accused was charged under Section 135 of the Customs Act, 1962, to which he pleaded not guilty and claimed judicial trial.

In the after-charge evidence, both the witnesses i.e. Mahipal Singh and Anup Kumar were recalled for further cross-examination as PW1 and PW2 respectively, besides examining Jagjit Singh Inspector Customs (PW3) and Vijay Kumar (PW4). Thereafter, the evidence was closed by the complainant.

The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded, wherein, he denied all the incriminating circumstances appearing against him and pleaded his false implication. He further stated that he has been resident at Malout for the last about 10/12 years and he along with his brothers Gurmej Singh and Kala Singh had been taken away by ASI Gurmej Singh in the police gypsy, whose driver was Manjit Singh, to B.S.Modern School, where, they were detained for 17-18 days. He denied anything having been recovered from him. In defence, he examined Lala Ram (DW1), Parkash Chand (DW2), Prem Kumar Bansal (DW3) and Parshotam Lal (DW4). However, the trial ended in conviction and the appeal also failed.

Arguments heard. Record perused.

The Counsel for the accused has submitted that the accused

was not found in possession of the aforesaid gold biscuits, on any occasion. He has urged that the Courts below recorded the conviction merely on the basis of his alleged confessional statements, under Section 108 of the Act, recorded by the Custom Officers. He has further submitted that the Custom Officers, being Police Officers, the confessional statements, allegedly made before them by the accused, were hit by the provisions of Section 25 of the Indian Evidence Act, 1872 and, thus, were not legally admissible. He has further submitted that no other evidence was produced by the complainant, to prove that the accused was found in possession of the gold biscuits. It was also submitted that though the alleged recovery was effected on 22.3.1995 from the accused, whereas, his alleged confessional statements were recorded on 23.3.1995 and 25.3.1995 under Section 108 of the Act. It is also submitted that the mere fact that such statements were recorded by the Customs Authorities, after the lapse of sufficient time of the alleged recovery, in itself is sufficient to show that no such statements, much less voluntary, were made by the accused.

The first question, that arises for consideration, is, as to whether, the voluntary confessional statements 23.03.1995 and 25.03.1995 made by the accused(revision-petitioner) under Section 108 of the Act before the Custom Officers, are admissible into evidence or not. In **State of Punjab vs.Barkat Ram,AIR,1962 (Supreme Court) 276.** A three Judge Bench of the Apex Court, while considering, whether the Custom Officers, to whom the confessional statement was made, could be said to be the Police Officers, within the meaning of Section 25 of the Evidence Act, observed that they are not police officers. On behalf of the prosecution, it

was argued that the mere fact that certain powers of arrest, search, seizure and recording of evidence, had been conferred, on such officers, in the cases, where the contravention of the provisions of the Statute, was complained of, is not sufficient to make them Police Officers, under Section 25 of the Evidence Act. The plea by the respondents was that the Officers, on whom such powers were conferred, were, in fact, Police Officers, no matter, by what name, they were called. The Apex Court, by majority, pointed out that the primary function of the Police, under the Police Act, 1861, is prevention and detection of crime, while the Customs Officers, were mainly interested in the detection and prevention of smuggling of goods and safeguarding the recovery of customs duties, i.e., they were more concerned with the goods and the customs duty, than with the offender. After referring to the provisions of various Statutes, including Section 5(2) of the Old Criminal Procedure Code (now Section 4(2)of the Code) it was held by the Apex Court, that merely because the Custom Officers, had been entrusted with certain powers, having similarity with those of the Police Officers, was not sufficient to make them Police Officers, within the meaning of Section 25 of the Evidence Act.

In **Romesh Chandra Mehta v. State of West Bengal, AIR 1970, (Supreme Court), 940,** a Constitutional Bench of the Apex Court, observed that the test for determining, whether an Officer of the Customs, is deemed to be a Police Officer, is whether, he is invested with all the powers of a Police Officer, qua investigation of an offence, including the power to submit a report under Section 173 Cr.P.C. It was held that since a Custom Officer exercising the powers to make an enquiry, could not submit a report

under Section 173 Cr.P.C., and, as such, he could not be said to be a Police Officer, within the meaning of Section 25 of the Evidence Act.

In **Illias v. Collector of Customs, Madras, AIR 1970 (Supreme Court) 1065,** the same very Bench was required to consider, if the Custom Officers under the Customs Act, 1962, were Police Officers, within the meaning of Section 25 of the Evidence Act. The Apex Court, referred to all the cases earlier decided and came to the conclusion, that they were not Police Officers within the meaning of Section 25 of the Evidence Act, as they could not present report, under Section 173 Cr.P.C.

In **Pavunny v. Assistant Collector 1997(3) RCR, 71 (SC),** the Apex Court reiterated the earlier view and observed that the confessional statement, made before a Custom Officer, was admissible, as he is not a Police Officer within the meaning of Section 25 of the Evidence Act, though he is entrusted with many of the powers, which an officer-incharge of the Police Station exercises while investigating an offence. It was further held that though a Custom Officer is, a person in authority, within the meaning of Section 24 of the Evidence Act, by reason of statutory compulsion of recording the statement of the accused, pursuant to his appearance, either after issuance of the summons or after his surrender, such statement cannot be characterized to have been obtained, by threat, inducement or promise, and the self made statement, is admissible in evidence on the complaint laid by the Custom Officer.

In **Veera Ibrahim v. The State of Maharashtra 1976(2) SCC 302**, while posing a question, "as to whether such statement made under Section 108 of the Customs Act, by the appellant, therein, were hit by the

provisions of Section 25 of the Evidence Act and, as such, inadmissible into evidence, being in the nature of confession or not?", observed that, in order to claim the benefit of the guarantee, against testimonial compulsion, embodied in clause (3) of Article 20 of the Constitution of India, it must be shown, firstly, that the person, who made the statement was "accused of any offence" and secondly, that he made this statement, under compulsion. The phrase "accused of any offence" includes within its ambit, only a person, against whom a formal accusation, relating to the commission of an offence, has been levelled, which, in the normal course, may result in his prosecution. In these circumstances, it was held by the Apex Court, that when the statement of the appellant, was recorded, by the Custom Officers, under Section 108 of the Act, the appellant was not a person "accused of any offence" under the said Act. It was further held that an accusation which would stamp him, with the character of such a person, was levelled only, when the complaint was filed against him, by the Assistant Collector of Customs, complaining of the commission of offence, under Section 135 (a) and Section 135(b) of the Customs Act. In these circumstances, it was held that the said statements were not hit by Article 20(3) of the Constitution of India, and Section 25 of the Evidence Act.

From the principle of law, laid down, in the aforesaid cases, it is clearly evident that the confessional statements made by the accused, before the Custom Officers, under Section 108 of the Act, if found to be voluntary, would be legally admissible into evidence. The Counsel for the petitioners, however, has placed reliance on **Noor Aga v. State of Punjab and another,** 2008(3) RCR (Criminal) 633 (SC), a decision rendered by

two Hon'ble Judges of the Apex Court, in support of her contention, that since the Custom Officers, are Police Officers, confessional statements, made by a person, before them, under Section 108 of the Act, are hit by the provisions of Section 25 of the Indian Evidence Act, 1872. In view of the principle of law, laid down, in **Romesh Chandra Mehta's,Illias's, State of Punjab's and Pavunny's cases (supra)** decided by larger Benches of the Apex Court, no help could be drawn, from the principle of law, laid down, to the contrary, on the same point, in **Noor Aga's case (supra)** decided by a two Judge Bench of the Apex Court. In this view of the matter, the submission of the Counsel for the petitioner, being without merit, must fail, and the same stands rejected.

The mere fact that the confessional statements of the accused were recorded on 23.03.1995 and 25.03.1995 did not mean that the same were not voluntary. No evidence, whatsoever, was produced, on the record, that the accused was subjected to torture, coercion or duress, resulting into the making of confessional statements by him. The solitary circumstance that the confessional statements (Ex.PC and Ex.PH) were recorded by the Customs Authorities under Section 108 of the Act, after some delay, could not be said to be sufficient to discard their reliability. It was proved from the evidence, produced by the complainant, that the accused made these statements voluntarily, without any pressure, coercion or duress. In the confession statement Ex.PC, he has stated that the statement was read over to him and after admitting the same to be correct, he thumb marked it. He also admitted the recovery of six gold biscuits from him on the relevant day and that he could not produce any documents with regard to the possession/

acquisition/ importation thereof. The statements themselves find mention that the same were made while in sound disposing mind, without any fear, pressure or allurement, therefore, there is no reason to exclude such statements from consideration.

The next question that arises for consideration, is as to whether on the basis of the retracted confessional statements, made by the accused under Section 108 of the Act, before the Customs Superintendent, confessing his guilt, could be made the basis of conviction or not. In this regard, it may be observed that denial to the confessional statements was made for the first time on 17.12.1992 when the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. Such retraction made at the fag end of the trial would enable the Court to draw an adverse inference against the accused. In such situation, the voluntary confessional statements made by the accused coupled with the recovery of gold biscuits,referred to above,with regard to the possession/acquisition/ importation whereof they could not produce any proof, were sufficient to record their conviction and award them sentence. In **Union of India vs. Satrohan, 2008(3) RCR (Crl.), 803,(SC)** recovery of 99 bags of contraband from the accused, was effected, by the Custom Officers. The accused retracted from his voluntary confessional statement, after more than six years. In these circumstances, it was held that the retraction was an afterthought, and the conviction could be based on such voluntary confessional statement. The principle of law, laid down, in **Satrohan's case (supra)** is fully applicable to the facts of the instant case.

Counsel for the petitioner has also taken me through the

testimonies of the defence witnesses and has persuaded to believe the same and discard the prosecution evience. The contention is not approved. Lala Ram (DW1) and Parkash Chand (DW2) have only stated that the accused had been residing at Malout for the last about 10/12 years and about 4 years back, and the accused along with his brother was taken away from his house and involved in the false case. Prem Kumar Bansal (DW3) Inspector Food and Supply Department, Malout proved copy of ration card, while Parshotam Lal (DW4) is Senior Clerk in the office of Municipal Council, Malout who proved the enlistment of the accused as voter in M.C.Malout. Such evidence led by the accused is hardly sufficient to shake the findings of his guilt.

The concurrent findings, recorded by the Courts below based on the correct appreciation of the cogent, convincing, reliable and trust-worthy evidence of Mahipal Singh Inspector Customs (PW1), Anup Kumar Superintendent Customs (PW2), Inspector Customs Jagjit Singh (PW3) and Vijay Kumar (PW4), who deposed with regard to the recovery of gold biscuits, aforesaid, from Sardara Singh, coupled with the voluntary confessional statements made by the accused, under Section 108 of the Act, that the accused was guilty of the offence, punishable under Section 135 of the Act, do not suffer from any illegality or perversity. It is settled principle of law, that the Court, in its revisional jurisdiction, cannot re-evaluate and re-appreciate the evidence, produced by the parties, until and unless, it comes to the conclusion, that the findings recorded by the Courts below, are perverse or erroneous, on account of mis-reading of evidence. On careful perusal of the judgments of the Courts below, nothing could transpire which

may render the findings as perverse, illegal or erroneous, therefore, the same deserve to be maintained.

Faced with the situation, Mr.Goraya, the learned counsel appearing for the accused-petitioner has sought some indulgence of this court on the quantum of sentence on the grounds of longevity of the proceedings and petty recovery of the gold.

While considering the above submission, it may be highlighted that the recovery of only six gold biscuits weighing about 700 gms was effected from the petitioner; the occurrence took place about 15 years back and since then the petitioner has been facing the agony of protracted proceedings; at the time of recovery, he was a young boy and he has already undergone about one year of sentence, therefore, these could be treated as mitigating circumstances for reduction of the sentence.

Consequently, the petition is dismissed with the modification in the sentence which is reduced to two years, without any alteration in the sentence of fine.

September 20, 2010 (A.N.JINDAL)
`gian' JUDGE